

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSE ACOSTA

plaintiff)

v.)

JUSTIN THOMAS - SUPERINTENDENT)

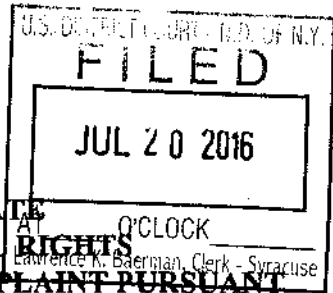
CARL J. KOENIGSMANN - DEPUTY COMMISSIONER)

CHIEF MEDICAL OFFICER)

DR. VADLAMUDI - FACILITY HEALTH SERVICES)

DIRECTOR)

JOHN SERHAN/JOSEPH GULLO - AUDIOLOGIST)



INMATE AT 9 O'CLOCK
CIVIL RIGHTS COMPLAINT PURSUANT TO

42 U.S.C. § 1983

Case No. 9:16 CV 890

Plaintiff(s) demand(s) a trial by: ☐ JURY ☒ COURT (Select only one).

Plaintiff(s) in the above-captioned action, allege(s) as follows:

That the above-named Defendants have all violated plaintiffs Constitutional rights Against Cruel and Unusual Punishment and the right to adequate medical treatment.

JURISDICTION

1. This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) and 2201.

PARTIES

2. Plaintiff: JOSE ACOSTA - 08A0290

Address: 9000 OLD RIVER ROAD - P.O.BOX - 3600

MARCY CORR. FACILITY

MARCY, NEW YORK 13403-3600

Additional Plaintiffs may be added on a separate sheet of paper.

3. a. Defendant: JUSTIN THOMAS

Official Position: SUPERINTENDENT

Address: MARCY CORR. FACILITY

9000 OLD RIVER ROAD

MARCY, NEW YORK 13403-3600

b. Defendant: DR. VADLAMUDI
Official Position: FACILITY HEALTH SERVICES DIRECTOR
Address: 9000 OLD RIVER ROAD-P.O BOX 3600
MARCY CORR. FACILITY
MARCY, NEW YORK 13403-3600

c. Defendant: CARL J. KOENIGSMANN, M.D.
Official Position: DEPUTY COMMISSIONER - CHIEF MEDICAL OFFICER
Address: 1220 WASHINGTON AVENUE., BUILD. # 2
STATE CAMPUS BUILDING
ALBANY, NEW YORK 12226

SEE ADDITIONAL SHEET FOR OTHER NAMED DEFENDANTS
Additional Defendants may be added on a separate sheet of paper.

4. PLACE OF PRESENT CONFINEMENT

a. Is there a prisoner grievance procedure at this facility?

☒ Yes ☐ No

b. If your answer to 4a is YES, did you present the facts relating to your complaint in this grievance program?

☒ Yes ☐ No

If your answer to 4b is YES,

(i) What steps did you take? FILED FORMAL COMPLAINT, APPEALED
TO SUPERINTENDENT THEN APPEALED TO ALBANY (C.O.R.C.)

(ii) What was the final result of your grievance? _____

-DENIED-

ADDITIONAL SHEET OF OTHER NAMED DEFENDANTS

d. Defendant: JOHN SERHAN

Official Position: NYS D.O.C.C.S. AUDIOLOGIST

Address: 1220 WASHINGTON AVENUE-BLDG # 2

ALBANY, N.Y. 12226

C/O DR. KOENIGSMANN-IMMEDIATE SUPERVISOR

e. Defendat: JOSEPH GULLO

Official Position: NYS D.O.C.C.S. AUDIOLOGIST

Address: 1220 WASHINGTON AVENUE-BLDG # 2

ALBANY, N.Y. 12226

C/O DR. KOENIGSMANN-IMMEDIATE SUPERVISOR

Note that all named Defendants are being sued in their individual capacity and their official capacities, individual capacity because as human beings they fully know that their actions or inaction would cause plaintiff undue harm and in their official capacities because due to their positions and training to uphold said positions they must know that their actions or failure to act would cause plaintiff undue pain and suffering yet they chose to sit by and do nothing.

If your answer to 4b is NO - why did you choose to not present the facts relating to your complaint in the prison's grievance program? _____

- c. If there is no grievance procedure in your institution, did you complain to prison authorities about the facts alleged in your complaint?

☐ Yes ☐ No

If your answer to 4c is YES,

- (i) What steps did you take? _____

- (ii) What was the final result regarding your complaint? _____

If your answer to 4c is NO - why did you choose to not complain about the facts relating to your complaint in such prison? _____

5. PREVIOUS LAWSUITS

- a. Have you filed other lawsuits in state or federal court relating to your imprisonment?

☒ Yes ☐ No

- b. If your answer to 5a is YES you must describe any and all lawsuits, currently pending or closed, in the space provided below.

For EACH lawsuit, provide the following information:

- i. Parties to previous lawsuit:

Plaintiff(s): **JOSE ACOSTA**

Defendant(s): **STATE OF NEW YORK**

ii. Court (if federal court, name District; if state court, name County):

COURT OF CLAIMS - CHEMUNG COUNTY

iii. Docket number: **124616 - INDEX #13-160784-0**

iv. Name of Judge to whom case was assigned: **UNASSIGNED AS OF YET**

v. Disposition (dismissed? on appeal? currently pending?): **PENDING**

vi. Approximate date of filing prior lawsuit: **JULY 2014 (?)**

vii. Approximate date of disposition: **NONE YET**

6.

FACTS

Set forth the facts of your case which substantiate your claim of violation of your civil and/or Constitutional rights. List the events in the order they happened, naming defendants involved, dates and places.

Note: You must include allegations of wrongful conduct as to EACH and EVERY defendant in your complaint. (You may use additional sheets as necessary).

SEE ATTACHED SHEETS

FACTS - SUPERINTENDENT JUSTIN THOMAS

Defendant Justin Thomas herein after referred to as SUPT, is fully aware of the inhumane treatment being afforded to the inmates under Dr. V care by formally reviewing and responding to all formal complaints (grievances), filed against Dr. V, SUPT Thomas is fully aware of the wide spread pattern of abuse, yet he chooses to do nothing and rubber stamp the grievance complaints "denied" denying legitimate complaints and not doing anything to correct said inhumane treatment of the inmates in the Correctional Facility in which he is the Commander and Chief, clearly the SUPT has the power and authority to correct said inhumane treatment yet he chooses to sit back and turn a blind eye and deaf ears to the cries for help from the inmates who look to him for such protection and guidance, his reluctance to do anything to remedy the situation is clearly a showing of deliberate indifference to the very serious medical needs of plaintiff and other prisoners in the prison, I can understand that many a times inmates can exaggerate or cry wolf, BUT when you get numerous complaints essentially outlining the same issues in substance against one particular individual then something must be amiss, surely some iota of credibility can be given to the the allegations of abuse, inhumane treatment and to sit back and do nothing speaks volumes in and of itself, yes, we, prisoners must pay for our misdeeds and the Courts, the Judicial System meted out a sentence for such misdeeds, I am pretty sure, that inhumane treatment during the course of such sentence was not to be part of the term of imprisonment. The SUPT cannot in any way justify or say that he was not aware of the inhumane treatment or abuse of the inmates under his care or under the medical care of Dr. V, the SUPT has answered many a grievance appeal, seeking his help and SUPT Thomas freely chose

FACTS - SUPERINTENDENT JUSTIN THOMAS - page 2

to do nothing to remedy the cruel and inhumane treatment being perpetuated by Dr. V to the inmates under his care, the SUPT flat out refusal to act to remedy the cruel and inhumane treatment makes him also liable for allowing the violations of the Constitution of the United States of America against Cruel and Unusual Punishment in violation of the 8th, Amendment. (U.S.C.A. Const. Amend. 8) The SUPT should not be allowed to say "but I delegated my authority to others", for this is not a valid reason not to correct the wide spread abuse of the inmates by Defendant Dr. V the Facility Health Services Director! SUPT Thomas has the power and authority to order Dr.V to cease and desist in his inhumane treatment, the SUPT should have took some type of corrective action to prevent such violations within his area of responsibility, which is the whole prison, not just sections of the prison, the SUPT failure to act reasonably allowed the inhumane treatment to continue, the SUPT was put on notice yet he failed to do anything and should be held accountable for such failure to act, which he could have done at during the formal grievance complaint Superintendent appeal process, said grievance complaints clearly spelled out the problems and seriousness of the lack of care and concern by Dr. V thus putting the SUPT on notice, he failed to sufficiently act, making him culpable because he clearly must have known that if he failed to act to remedy the inhumane treatment/situation plaintiff would continue to suffer and wallow in pain due to the serious medical ailments plaintiff is afflicted with due to the brain tumor operation, this was a conscious clearly made disregard of substantial risk to plaintiff, the SUPT should not be allowed to get away with callously allowing plaintiff to be treated worse

FACTS - SUPERINTENDENT JUSTIN THOMAS - page 3

than an animal, the SUPT actions and inactions should not be swept under the rug for to do so would allow the further violations of basic human needs leading to violations of Constitutional dimensions.

FACTS - CARL J. KOENIGSMANN, M.D.

Dr. Koenigsmann, hereafter referred to as (Dr. K), had actual knowledge of the cruel and inhumane treatment that plaintiff was/is being subjected to by numerous letters that were written to him clearly detailing the inhumane treatment yet he did not respond in any way by correcting the horrendous treatment of plaintiff. As stated above Dr. K was made aware of such treatment and serious medical needs by correspondence and medical documentary proof contained in plaintiffs medical file, yet Dr. K failed to act reasonably or completely disregarded the matter by not responding at all to the majority of plaintiffs letters to him, Dr. K allowed Defendant Vadlamudi (Dr. V), to treat plaintiff inhumanely and allowed Dr. V to violate published professional standards by allowing Dr. V to abruptly discontinue plaintiffs medication clearly against the medications manufacturer's warning to avoid Abrupt cessation Dr. K was grossly negligent in supervising Dr. V after plaintiff put him on notice of the inhumane cruel treatment plaintiff was being subjected to, plaintiff clearly informed Dr. K of said Unconstitutional acts, yet he failed to act, thus rising to the level of deliberate indifference to plaintiffs serious medical ailments by failing to act reasonably on the information indicating that the Unconstitutional acts were being committed by Dr. V, Dr. K was/is clearly aware of the history of abuse by Dr. V, through written letters to him from plaintiff and other inmates and from being a participant/chair in C.O.R.C. in albany, Central Office, yet he chose to sit back and do nothing to remedy the situation, therefore turning a blind eye to the inhumane treatment of plaintiff and others, all plaintiffs correspondence to Dr. K arrived at at time when he, Dr. K had absolute authority and the opportunity to correct the Unconstitutional inhumane treatment making him culpable as if he himself was treating plaintiff inhumanely, and in no way should he be allowed to get away with allowing and condoning said inhumane

FACTS - CARL J. KOENIGSMANN, M.D. - page 2

treatment of any human being, Dr. K should not be excused from not acting over Dr. V and delegating his authority, Dr. K, as Chief Medical Officer and Deputy Commissioner has the power to act and the "duty" to correct the inhumane treatment, yet he clearly chose not to allowing plaintiff to suffer and wallow in pain, by not instructing Dr. V to prescribe the proper pain medication for plaintiff ailments, he Dr. K would surely not allow a patient in the free world to be treated in this manner, so he should not be excused from allowing a sick prisoner from being inhumanely treated, he Dr. K should not be allowed to state that he did not know of plaintiffs serious medical issues, as he was clearly made aware of them clearly and plainly in numerous letters and by documentary medical documents, Dr. K failure to act on plaintiffs serious medical issues is a clear indication of his deliberate indifference to plaintiffs serious medical ailments making him liable for allowing the violations of plaintiffs Constitutional rights against Cruel and Unusual Punishment (U.S.C.A. Const. Amend. 8)

(Plaintiff is enclosing numerous letters that were written to Dr. K)

FACTS PERTAINING TO DEFENDANT DR. VADLAMUDI

My initial encounter with Dr. Vadlamudi, herein after will be referred to as (Dr. V), was on December 22, 2015 at a Dr. initiated appointment, prior to this appointment, I was told by the nursing staff on numerous occasions that I would be discontinued from my present medication (neurotin), "it's not us, it's Albany", on December 22, 2015, Dr. V told me " I don't think that it is a good idea for you to be on neurotin" I then explained the results/benefits of neurontin on the residual effects from the brain tumor operation on May 30, 2003, such as relief from the severe pain from the arthritis on my neck(cervical spine), the nerve damage to the left side of my face, which at times cause electrical jolts/tics which can be very painful when they occur, the displaced left nerve root in my lower spine (lumbar spine) due to being inflicted with an infection at the cite where I was cut open to gain access to the brain tumor, due to this infection, I had to have numerous spinal taps and a shunt surgically placed to remove the brain fluid that was accumulating, relief from the severe headaches, and seizures, which just because no one at the facility has witnessed said seizures does not mean that I do not get them, I then also requested to be put in to see an audiologist (I lost my hearing in my left ear after the operation among other things), because before my transfer to this prison I had a hearing test done B.A.E.R./A.B.R. which resulted in an " Abnormal" result and that I had not had an opportunity to see an audiologist since the test was taken on October 27, 2015, Dr. V then stated " I see no need for neurotin or any need to see an audiologist" I then filed a formal complaint (grievance #MCY-19994-15-see audiologist), which was eventually denied then on December 24, 2015, my medication for all the painful ailments due to the brain tumor operation was discontinued, without any replacement being ordered in lieu of the

FACTS DR. VADLAMUDI - page 2

discontinued medication, I once again seen this very same Dr. on January 8, 2016, per my request due to the extreme pain that I was experiencing, I could not hear what Dr. V was asking of me, so I informed him that I could not hear him due to all the background noise from the infirmary hallway, he then stated something else which I did not hear, told him so again and asked if he would close the door or allow me move closer to him, he replied "NO", stated something else that I did not hear and informed him once again to which he stated " you can go" and proceeded to call in the next inmate, I then left without being treated for the severe pain. Another formal complaint ensued grievance (#MCY20056-16-Didn't receive treatment), this grievance was also denied but I was scheduled to see an audiologist, I then seen the same Dr. again per his request on January 20, 2016, to which he stated to me " I will not be prescribing neurotin for seizures let's see what happens, that is all" I then seen Dr. V again per my request on January 27, 2016, due to the extreme pain that I was being forced to unjustly endure, I entered the office and the Dr. asked me where is the pain? I then once again informed Dr. V of my medical ailments, that I have very bad pain in my neck due to having arthritis, pain on the left side of my face from the nerve damage that at times cause electrical jolts/ tics that are very painful when they occur, that I have pain in my lower back/spine due to the displaced left nerve root, severe headaches and pain in both elbows due to being inflicted with tendernitious for many years and not having the elbow sleeves that were given to me at Elmira CF, because they were taken from me at Draft in Elmira because I could not produce the medical permit.(it should be noted that during drafts to another prison inmates are not allowed to carry anything) Dr. V then told me to sit on the examination table and to lay down, he then lifted mylegs bent them, told me to sit up, touched the back of

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my neck, looked at the left side of my face, looked at my arms, and stated " I see no need for pain medication or neoprene elbow sleeves go to sick call for pain you will be evaluated there" (see: enclosed copy of AHR ambulatory Health Record dated January 27, 2016) for verification, why should I have to go to sick call when the purpose of the Dr. appointment was due to pain, the pain that I was/am experiencing? the Dr. is the only one who can prescribe effective long term lasting medication, so why would he refer me to sick call? It is to inflict undue pain and suffering on plaintiff because he fully knows that there are only two types of medication at sick call generic tylenol which cause me to become constipated and generic motrin which causes me to get severe stomach cramps, he Dr. V fully knows this, he knows that these medications will not be effective for my ailments yet he refuses to prescribe medication that would help alleviate my pain, he does this knowingly and wantonly without regard for my health and well-being, I am forced to go to sick call and chose tylenol the less of the two evils for temporary relief of the severe pain that he Dr. V forces me to maliciously endure, he can help me yet he chooses not to, on top of the pain I am now constipated and have to deal with the pain that, that at times causes! Dr. V has complete and absolute knowledge and access to my medical ailments and files, he has complete knowledge of the life threatening and life changing brain tumor operation and the residual ailments that I suffer, that will only get worse will "NEVER" get better or improve in any way, Dr. V has this knowledge by verbal communication with me, through my medical files yet he continues to allow me to suffer and wallow in pain, the United States Supreme Court has decreed that the "deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction

FACTS DR. VADLAMUDI - page 4

of pain...proscribed by the 8th. amendment" (Estelle v. Gamble-429 US 97; 104 S.Ct. 285(1976); see also Erickson v. Pardus-551 US 89; 127 S.Ct. 2197 (2007)), Defendant Dr. V as Facility Health Services Director (F.H.S.D), and this facilities main Doctor knows that he has complete reign over the medical department and can do as he pleases without fear of of being questioned or undermined as to his care of the inmates under his care, grievance complaints have no bearing or any significance upon him or his actions as is clearly stated on the grievance responce, responses from the Superintendent, responce from C.O.R.C. in Albany "that medical staff has the sole authority to determine protocol and treatment. Further IGRC does not have the authority to assess and determine medical protocol." **Grievance is denied.** (see: grievance decisions-Superintendent responses-C.O.R.C. decisions enclosed), ~~Dr. V is clearly aware of this thus allowing him to treat~~ plaintiff without fear of reprisal, Dr. V has had 100's of complaints logged against him yet nothing is done by his supervisors at the facility level nor by the prison authorities in Albany other than promoting him from facility doctor to Facility Health Services Director! I can say this for Dr. V he is consistant in his care for the inmates under his care, all Dr. V or his crony the nurse administrator have to say in response to complaints is " the present care is appropriate" and it is taken as it were a law etched in stone! Naturally the Dr. is going to say that the care is appropriate, I am pretty sure that he likes receiving his bi-weekly paycheck from the NYS D.O.C.C.S. but in essence he is getting paid for treating the inmates under his direct care inhumanely, like animals, no that is a wrong accessment because even animals get humane care when they are ill and in pain!

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I then seen dr. V again April 11, 2016, due to a grievance filed on Defendant Mr. Gullo (audiologist), the grievance was filed due to Mr. Gullo filing an incomplete and inaccurate "Audiology Report" after I seen him and he tested my hearing on April 1, 2016, in which Mr. Gullo conducted 3 test, 1. Audiogram, 2. Sound Recognition Treshold test, 3. a one ear type headphone test in which one end was placed inside my ear canal and the other end was on the back of my head, after these 3 test Mr. Gullo determined that the test results were "Unreliable" the second "Unreliable" result, the first was on February 17, 2015, upon my review of said audiology report about a week later, I noticed that Mr. Gullo made no mention of two of the three test that he conducted yet he determined that the results were "Unreliable", I then filed a "Challenge to Accuracy Form" with the medical department and filed grievance #MCY-20271-16-needs explanation, which was denied but in the grievance investigation report which Dr. V answered, he (Dr.V) stated " the audiologist determined that the test results were unreliable, the abnormal test has no significance, he can follow up here" (see: copy of investigation report enclosed), I then went to sick call to receive said follow up and after a couple of visits to sick call I was scheduled to see dr. V for follow up to the audiologist visit as mentioned in the grievance investigation, I then seen Dr. V on April 11, 2016, and he told me " the audiologist determined that the test results were unreliable, you can go now" I then asked the Dr. if that was the follow up that he referred to in the grievance investigation to which he stated "YES", I then left and another grievance ensued MCY-20394-16 medical indifference, as usual it was denied, Dr. V is clearly indifferent to my serious medical needs and vindictive, he chooses not to act reasonably to plaintiffs serious medical ailments clearly noted by

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M.R.I. reports and other legitimate medical documentation which he has complete and absolute access to, Dr. V is fully aware of his actions, he is fully aware that without proper medication plaintiff will suffer and wallow in pain, undue and avoidable pain yet he chooses to do nothing and allow plaintiff to suffer, this is knowingly and deliberately done to inflict pain upon plaintiff, Dr. V actions cannot be condoned nor allowed to continue, as it is inhumane and goes against civilized standards of humanity and decency, clearly repugnant to the United States Constitution of America. (U.S.C.A. Const. Amend. 8)

C.O.R.C. in its decision to grievance MCY-20056-16 (did not receive medical treatment), states that I seen Dr. V on numerous dates but fails to take into account or mention that the Dr. has not as of December 24, 2015 not prescribed any type of medication to alleve plaintiff of the severe pain that he is forced to endure on a constant daily basis, they do state that on the 1/8/16 dr's appointment that I requested neurotin (pain, seizure, nerve damage medication) and neoprene elbow braces but that they were determined not to be medically indicated at that time, they also go on to state that "Dr. V stated that the appointment was not terminated early and that grievant could hear him well" This is completely contrary to what Dr. V wrote on the CHR (Comprehensive History Report) for that appointment which was "that he advised me to leave the room", so not only did Dr. V not treat me for my serious documented medical ailments that day, he also misled C.O.R.C. by telling them did he did not terminate the appoinment early, Dr.V also wrote that I could hear him well so basically he is outright admitting that he believes that I am in some way form or fashion faking my hearing impairment, irregardless of the fact that the auditory nerve in my brain had to be removed due to the brain tumor being wrapped around it and the ABR test result

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clearly notating that my brain is experiencing difficulty transmitting sound, this seems to have absolutely no bearing, for some reason they all believe that I am faking my ailments and hearing loss and I believe that due to this they deny me the treatment that i need and require to subside as any other prisoner within the custody of the NYS D.O.C.C.S. I cannot fake my hearing impairment nor my serious medical ailments, my complaints are clearly back up by professional medical documents and professional doctors who read and attested to the findings of the M.R.I. reports, in any event why would I want to fake my illnesses or hearing impairment? Its not like I am getting narcotic medication for the pain nor will I be released due to my hearing impairment, I will still be in prison, I will just be sent to a prison where the staff is a bit more receptive and tolerant to hearing impaired inmates, the ABR test cannot be faked, it measures how your brain responds and transmits sound to other parts of the brain, I cannot control my brain in that regard to give an abnormal result who do they think that I am? C.O.R.C. then goes on to state other dates in which I seen Dr. V as to in some way give him validity for his actions which should really be his inactions in regards to my medical treatment, I will reiterate that on the 1/20/16 Dr.s appointment Dr. V called me down to tell me "I will not be prescribing neurotin for seizures lets see what happens, and you can go to sick call for pain meds", then on the 1/27/16 appointment which was initiated by me due to the intense pain that I was/am suffering, he Dr. V once again concluded that pain medication is not medically indicated.(see:CHR dated:1/27/16) Dr.V is clearly vindictive due to my formal grievance complaints at the facility level and my numerous letters to Officials in Albany which did not correct the matter but must have infuriated him to the point of completely denying me any medical attention to alleve my serious medical ailments, Dr. V uses

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his title of Facility Health Services Director to hide behind his abusive non-treatment of my serious medical ailments knowing fully well that as such he has the final say in the treatment of the inmates under his care as is clearly evidenced by the decisions from the Inmate resolution committee (I.G.R.C), the Superintendent decisions, and this most recent C.O.R.C. decision, C.O.R.C. goes on to further state that "they find insufficient evidence of malfeasance by staff and asserts that he is receiving proper care" O.K. I have severe nerve damage to the left side of my face which at times cause electrical type jolts/tics that are very painful when they occur, am I getting treatment or medication? **NO!** I have very painful arthritis on the base of my neck where I was cut open to get to the brain tumor, am I getting treatment or medication? **NO!** I have tendernitious in both elbows which cause so much pain that at times I want to scream out in pain, am I getting treatment or medication, or at the least elbow braces? **NO**, not medically indicated! but keep in mind that I have documentation in my medical file of years of permits for elbow braces, I have severe pain in my lower back due to a misplaced (L) nerve root clearly documented by an M.R.I. report, am I getting treatment or medication? **NO!** This is not taking into consideration other smaller medical issues such as fungus in both my finger nails and toe nails that Dr. V said " oh it's not so bad!", so tell me does it appear that I am receiving proper medical care? I am receiving absolutely no care at all for my serious medical issues, I am forced to go to sick call to get tylenols for temporary relief and then I have to deal with the constipation that tylenol causes me, they will **never** admit to a lack of care but they don't have to, the medical records speak for themselves, no medication or treatment has been prescribed since I was taken off of my seizure, nerve damage, pain medication(neurotin) since December 24, 1991.

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2015, over 6 months ago, C.O.R.C. also comments on my hearing designation HL 30(non-significant hearing loss), that my most recent hearing test was unreliable, lets not forget about the other unreliable hearing test result in 2015, so 2 unreliable hearing test, 1 abnormal ABR hearing brain test and my hearing loss is non-significant, that is just incredible, Dr. V stated about the appointment on 1/8/16, that I could hear him well, that is also incredible, how can he determine what I can and cannot hear, then C.O.R.C. goes along with this clearly invalid claim by Dr. V., how I truly wish that they could all walk in my shoes for just 24 hours, their diagnosis in regards to my hearing and pain issues would surely radically change, we know that, that will never happen, but in the meanwhile do they send me to get further testing to see if maybe the brain tumor is growing back? It has been 13 years since the operation, and the fact of my hearing deteriorated ; so rapidly these past 8 months or so clearly necessitates such action they take no action at all, they just don't care as is clearly seen by the inaction of Dr. V and the other defendants, especially Dr. Koenigsmann who as Chief Medical Officer should clearly foresee complication and their causes, both Dr.s have been Medical Dr.s for many, many years they both know that with my serious medical history something must be amiss yet they fail to do anything to ascertain the cause of my severe pain or deteriorating hearing, all the defendants need to be held accountable for their actions or more reasonably put their inactions in the care of my serious medical issues, they need to be ordered to provide plaintiff with all the medical and audiology treatment necessary and only does this Court have the authority to do so, plaintiff will continue to be treated inhumanely without such order from the Court, their actions are clearly in violation of the Constitution of the United States of America and they should be held accountable for their actions, such behavior should not be condoned

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nor allowed to continue, which will surely happen if this Court does not step in and correct this clear violation of plaintiffs Constitutional right against Cruel and Unusual punishment, plaintiff has suffered and continues to suffer, please help me!

FACTS - JOHN SERHAN - AUDIOLOGIST

Defendant JOHN SERHAN from herein after will be referred to as Mr. Serhan. Mr. Serhan fully knew that on August 23, 2010, when he changed my hearing designation from HL 20 to HL 30 that it would cause me undue harm because the HL 30 designation does not afford any reasonable accommodations other than hearing aids, batteries, and preferred seating. Mr. Serhan fully knew that plaintiff would not be allowed to obtain a shake awake alarm clock or a much needed telephone amplifier which would allow plaintiff to hear when speaking to family or friends to which he has not been able to do since 2010 due to not being able to hear! Mr. Serhan fully knew that I had a life threatening operation to remove a large brain tumor that was wrapped around the fifth auditory nerve in my brain, hence that was one of the few reasons Mr. Serhan took into consideration when he classified me HL 20 in Downstate on January 30, 2008 (see:enclosed copy of audiology report), at this time he told me "I noticed that when I speak you look at my mouth" to which I replied "it is something that I have learned to do, it is not always effective but it helps the majority of the time" at this point (1-30-08) Mr. Serhan stated "your hearing will **NEVER** improve but will only grow worse due to your right ear having to over compensate for the loss of your hearing in your left ear" Mr. Serhan knowing and telling me this must have surely known that in the future my hearing would grow worse and get to the point in which it is at this moment, I cannot hear what anyone is saying to me in either a quiet or noisy environment as opposed to just noisy environments giving me extreme difficulty in hearing at that time, Mr. Serhan clearly knew or should have known as fact that my hearing would worsen over time, Mr. Serhan was fully aware of my hearing difficulties and the reason for my hearing loss and difficulties and was clearly aware that I am serving a 15 to life term of imprisonment

in which said hearing difficulties would absolutely grow worse yet he changed my hearing classification, when I continued to complain to medical and to Mr. Serhan during audiology visits he finally agreed to re-test my hearing (July 2011-Sullivan CF), after said test Mr. Serhan stated to me "O.K. I am going to re-classify you HL 20, just don't request a sign language interpreter" Mr. Serhan clearly knew that he had absolutely no intention of re-classifying me HL 20 as was clearly evident by the denial of my application for a shake awake alarm clock a few days later. Mr. Serhan clearly knew that the HL 30 classification would pose an immense burden on plaintiff who was in the Special Housing Unit (S.H.U) at the time because plaintiff clearly expressed and explained the difficulties that plaintiff was experiencing in being awake for the morning go-round thereby missing said go-round and not being afforded showers, recreation, razors, cell clean up etc. I clearly informed Mr. Serhan of my extreme difficulty in hearing yet he failed, consciously failed to do anything, clearly Mr. Serhan has the medical background and knowledge and authority to act yet he consciously chose to do nothing, Mr. Serhan clearly took all my medical issues and term of imprisonment into consideration in classifying me HL 20 yet 3 years later when I inform Mr. Serhan that I believe that my hearing felt like it was worsening, he himself chose to test my hearing without a medical written consult submitted to the Regional Medical Director in Albany for such approval to conduct any test, he took such unauthorized test, re-classified me HL 30 and it has been a close to 6 year battle, of which a lowly prisoner could not and would not win! I did not find out of such re-classification to HL 30 because Mr. Serhan did not inform me of such change I only found out because of my initial admission to S.H.U at Eastern CF when I applied

FACTS - JOHN SEHAN - AUDIOLOGIST - page 3

for a shake awake alarm clock due to having problems being awake for the morning go-round, I don't know what happened due to Mr. Serhan not informing me of the change but what I can say is that my hearing in no way improved in any way form or fashion as said new designation would denote. Here I am 6 years later still experiencing the negative impact of said new designation, not being able to hear in noisy or quiet environments basically within reach of being completely deaf, all I can clearly hear is a very loud ringing that interferes in my hearing of anything, I need a much stronger hearing aid, I need a telephone amplifier, I need to learn sign language yet due to the HL 30 designation I am not entitled to such reasonable accommodations that I need to function as anyother inmate within the NYS D.O.C.C.S. this is not mere negligence nor mere medical malpractice, this was consciously done to inflict undue hardship upon plaintiff, Mr. Serhan himself told me "your hearing will NEVER get better, it will only grow worse", so how is it that 3 years after being classified HL 20, he deems my hearing greatly better that a new designation of HL 30 is warranted? Is this mere negligence? I think not, Mr. Serhan in his professional position as Head Audiologist for the NYS D.O.C.C.S. clearly is fully aware that this supposed improvement could not be so as he stated "your hearing will NEVER get better, it will only grow worse" and that plaintiff attempting to correct this grave injustice would be like handcuffing plaintiff behind his back, dropping a 17 foot wall in front of me and telling me to get over the wall, only the wall has grown higher as evidenced by the futile attempts of plaintiff in attempting to correct this conscious action, deliberately done to inflict hardship, pain and suffering upon plaintiff, Mr. Serhan clearly was aware that he was misleading plaintiff when he informed plaintiff

FACTS - JOHN SERHAN - AUDIOLOGIST page 4

after the last hearing test that Mr. Serhan conducted in 2011, "O.K. I am going to re-instate your HL 20 classification, just don't request a sign language interpreter" this was a consciously made statement on behalf of Mr. Serhan, not a mere negligent mistake unconsciously made or due to inexperience. Mr. Serhan should not be allowed to get away with such callous and inhumane disregard for the well-being of plaintiff and his hearing disability which has grown drastically worse, only Mr. Serhan could have remedied the situation at that time, Mr. Serhan fully knew that plaintiffs hearing would diminish over time due to the seriousness of the operation that led to the lost of hearing, Mr. Serhan must be held accountable for such wanton behavior towards plaintiff Mr. Serhans laid back and do nothing behavior has caused plaintiff such misery that continues to this very moment and will continue unless this Court steps in and orders remedial corrective measures be taken to relieve plaintiff of the cruel and unusual treatment and punishment that plaintiff is being forced to endure and subjected to on a daily basis without a moments respite!

FACTS - JOSEPH GULLO - AUDIOLOGIST

Defendant JOSEPH GULLO, herein after will be referred to as Mr. Gullo, Mr. Gullo has been treating plaintiff for his hearing issues on and off since March 2008, without any type of problem until Defendant Mr. Serhan changed plaintiffs hearing designation on August 23, 2010 in Eastern CF which happens to be a Sensorial Hearing Impaired Facility, after plaintiff was transferred to Elmira CF from Sullivan CF in 2012, at Elmira CF which Mr. Gullo covered as Audiologist, plaintiff continued to try to correct the consciously made error by Mr. Serhan by explaining in full detail the hearing problems that plaintiff was experiencing at that present time, such as the need for a stronger hearing aid due to not being able to hear well with the present one, the loud ringing in my ears which make it extremely difficult in hearing, to which Mr. Gullo stated was "Tinnitus" and that there was nothing that he could do" but that is not so, plaintiff through research has discovered that Tinnitus is caused by a number of factors such as, an ear infection, the use of certain drugs, a blocked auditory tube or canal, or a head injury, Mr. Gullos failure to inquire more indepth and order certain test to check further on the issue of the loud ringing is not mere negligence or due to lack of experience what it shows is a clear lack of care and concern for the well-being of plaintiff due to the continuous complaining of the need for a stronger hearing aid and the continuous loud ringing, this complaining continued for many months without any action by Mr. Gullo other than raising the volume of the hearing aid, but in raising the volume you also raise the amount of background noise that is also picked up which happens to be plaintiffs distinct problem in hearing, hearing and understanding what is being said to me in noisy enviornments, I have explained this to Mr. Gullo many times to which he has stated "there is nothing that I can do" which is clearly not so there are a number of hearing aids on the market which greatly reduce

FACTS - JOSEPH GULLO - AUDIOLOGIST - page 2

the background noise making it much easier for the user to hear and understand what is being said and what is going on around him/her, I have seen the T.V. commercials for said hearing aids on numerous occasions and have spoken to Mr. Gullo about getting one of those type hearing aids and his reply was "they are working on this hearing issue", the NYS D.O.C.C.S. has a duty to provide me with the means to be able to hear better, Mr. Gullo providing me with hearing aids that do not assist me in hearing is not adequate medical care to which the NYS D.O.C.C.S. and Mr. Gullo as Audiologist are duty bound to provide me, yes I know Mr. Gullo may say "but I just can't go out and buy any hearing aid" but I totally disagree with that because as a NYS Audiologist he has the authority to acquire the hearing aid that I need to hear as any other prisoner within the custody of the NYS D.O.C.C.S., they are duty bound to provide adequate medical care to those prisoners that they incarcerate irregardless of cost, but cost should not be an issue or factor because the noise reduction hearing aid was listed for only \$39.99 clearly inexpensive to obtain, and clearly needed to assist plaintiff in hearing better, Mr. Gullo's reluctance in assisting plaintiff in acquiring a hearing aid that would greatly assist in plaintiff's specific hearing problem is a crystal clear indication that Mr. Gullo is not overly concerned with plaintiff's hearing disability or plaintiff's well-being this is surely cognizant thought out behavior on the part of Mr. Gullo only when confronted with the fact that I seen the commercial on T.V. for the noise reduction hearing aids did Mr. Gullo change his prior statement of "there is nothing I can do" to "they are working on it" once again this is not mere negligence or a mere error in judgement, nor is it due to inexperience, it is carefully thought out and crafted by Mr. Gullo making it a conscious action done clearly to deceive the plaintiff into believing that there is nothing that can be done to aid

FACTS - JOSEPH GULLO - AUDIOLOGIST - page 3

plaintiff in hearing better, clearly meant to cause plaintiff undue hardship in hearing and functioning as any other inmate in the custody of the NYS D.O.C.C.S. Many months go by without any relief from the difficulty in hearing to which I know for a fact has deteriorated, so I requested that my hearing be tested, after approval from Albany to conduct the hearing test Mr. Gullo test my hearing on February 17, 2015, Mr. Gullo conducted two test, 1. audio gram 2. Sound Recognition test, in which I have to repeat words that Mr. Gullo says and I hear through headphones, after both test were conducted Mr. Gullo determined that the hearing test results were **UNRELIABLE**" and his recommendation, "**was the continued use of present hearing aid**" (see: enclosed copy of Audiology report enclosed), so Mr. Gullo recommends that I continue to use the hearing aids that I have been informing him for many months that are not effective in helping me to hear better, I did not find out about the test results until about a month later when I received the copy of the report that I requested and paid for, upon my review of said report I immediately signed up for sick-call and requested to see the Audiologist and was put in to see my medical provider because she has to submit the consult for the audiology visit, upon seeing my medical provider about a month later, she submitted the consult and I then seen Mr. Gullo, a little over 2 months after the last hearing test, upon entering the room Mr. Gullo asked me "what is going on?" to which I replied "I want to know "how can the test results be Unreliable?" Mr. Gullo then replied "that the results did not match because of me hearing the beeps from the audio gram at a different level than the words that he had me repeat back to him during the Sound Recognition test" I then asked Mr. Gullo "if they're any other test that can be performed to evaluate the full extent of my hearing loss" to which he replied "**NO**" I then attempted

FACTS - JOSEPH GULLO - AUDIOLOGIST - page 4

to subside as best as I could but it was just too much for me I was having extreme difficulty in hearing and had to rely on my sight and reading lips as best as I could and that is only effective when the person is facing me and I am close enough to hear some of the sound of their words and put the little sound that I hear with the motion of their lips as you can surmise this is not a very effective approach or method but it helps me when it doesn't then I am completely in the dark as to what is going on or being said to me, I grew frustrated, so I decided to apply for reasonable accommodations clearly listing my difficulty in hearing the morning wake up bell, and believe me when I tell you it is loud, difficulty in being awake for the morning go-round, difficulty in hearing given orders, difficulty in hearing the metal detector go off. (see: enclosed copy), it was denied due to my hearing designation being HL 30, but my medical provider Ms. Sandy Kelsey (nurse practitioner), deemed it necessary to further evaluate my hearing so she submitted a consult for further testing to be done at the nearby outside hospital (Arnot Health Medical Center), on October 27, 2015, I was taken to Arnot Health Medical Center to have a ABR (Auditory Brainwave response) test done, said results of this very specialized test came back "ABNORMAL" (see: enclosed copy), this test checks to see how the brain responds to sound and how it transmits sound to other areas of the brain (these are my words, I was not told this by anyone, I read about the test), so here is conclusive proof that my brain is not functioning properly, so surely I would get the help that I have been seeking all these years, right? This was not to be so, but before I get into that, keep in mind that months before Mr. Gullo informed me that there were no further test that could be done to further evaluate my hearing loss, Mr. Gullo is fully aware that there are further test that can be conducted to get a much better view of my

FACTS - JOSEPH GULLO - AUDIOLOGIST - page 5

hearing loss yet he flatly denys that any such test exist, so once again Mr. Gullo made another conscious decision to mislead plaintiff into believing that nothing could be done to further evaluate the over-all hearingloss of plaintiff, I was then packed up at Elmira CF to go on the draft (transfer) to another facility, I was packed up on a Tuesday and had to wait until thursday to leave because there is no draft movement on wednesdays, on wednesday I received a copy of the "ABNORMAL" ABR test result, so upon my arrival at Marcy CF I was scheduled to see Defendant Dr. V, I requested that I be submitted to see an audiologist due to the abnormal ABR hearing test amongst other things and Dr. V stated I see no need for an audiology consult, I then filed two formal complaints in regards to this matter and was eventually scheduled to see an audiologist. (it should be noted that I did not appeal these two complaints to C.O.R.C. in Albany), I was then taken to see the audiologist on March 1, 2016, at Walsh CF, the audiologist was no other than Mr. Gullo, upon entering the room Mr. Gullo asked me "what is wrong?" I then handed Mr. Gullo a copy of the abnormal ABR test results to which he stated "we already knew about this" I cannot see how we already knew about this if as of the date of the test October 27, 2016, I have not seen Mr. Gullo or any other audiologist, I did not have the opportunity to ask Mr. Gullo "how did we already know about this" because he handed me back the test results and immediately started to test my hearing doing 3 separate test 1. audiogram 2. Sound Recognition threshold test 3. a one ear type headphone test, in which one end of the headphones is inserted in my ear canal and the other end is placed on the back of my head, upon completion of the 3 above mentioned test, Mr. Gullo removed the one ear headphones and opened the door to the room, the correction officer immediately entered the room making his

FACTS - JOSE GULLO - AUDIOLOGIST - page 6

presense known by standing over and glaring at me, I then asked Mr. Gullo "what was the result?" and he replied "I cannot make a determination at this time" so I stated another unreliable result" to which Mr. Gullo replied "YES" But "how can that be I asked" (note: inbetween this the officer is growing impatient because I am still seated asking questions I believe) Mr. Gullo then replied "everything has to line up, it's not lining up" I wanted to ask Mr. Gullo "how is everything supposed to line up when my brain is experiencing difficulty in processing and transmitting sound" but I did not have the opportunity to do so because I had to leave the room because of the officer, so I had to leave the room without any indication or information that the abnormal ABR test has on my over all hearing which was the main reason for the audiology visit and without having any clue as to this second unreliable test result. I then requested and paid for a copy of the March 1, 2016, audiology report (see: enclosed copy), upon my review I noted that it makes no mention of two of the three test that Mr. Gullo conducted that day 1. Sound Recognition Threshold test 2. the one ear headphone test, yet Mr. Gullo determined that the test results were once again unreliable and once again his recommendation was "the continued use of the present hearing aids" which Mr. Gullo is fully aware of not helping me in any way to hear better yet he continues to recommend that I use an ineffective hearing aid once again this is not mere negligence nor a mere error of judgement or inexperience, Mr. Gullo fully knows that I will experience undue hardship in hearing with the present hearing aid, this is clearly deliberately done to inflict harm upon plaintiff, Mr. Gullo is fully aware of the ineffectiveness of my present hearing aid by verbal communication with me, Mr. Gullo fully knows all the circumstances surrounding my hearing loss and difficulties in hearing, Mr. Gullo

FACTS - JOSEPH GULLO - AUDIOLOGIST - page 7

clearly knows that the residual ailments from the brain tumor operation are degenerative in nature the symptoms will never get better or improve in any way and will only get progressively worse, here we are over 13 years since the brain tumor operation (May 30, 2003), and I am being treated as if all my ailments are a figment of my imagination or as if I am faking my illnesses and hearing loss, I had a very serious life threatening life altering operation that left me with numerous illnesses and yes I am happy to be alive but at times I wish that I would have died due to the severe pain and agony that I must endure. All the Defendants have played a role/part in the inhumane treatment that I must endure, some played larger roles than others but when you watch a movie and at the end the credits roll even the errand boy gets credit for his contribution to the movie, same as my inhumane treatment, it should not matter how big or small a role any of the Defendants played in the violation of plaintiff Constitutional right to be free of Cruel and Unusual treatment, when anyone reaches out for help as I have and the persons pleas and cries for help are ignored or not acted upon, allowing the treatment to continue and the complaints continue surely something must be amiss and to sit back and do nothing cannot be allowed nor condoned because they are prison officials they have an obligation to care for my medical needs and health and they are failing miserably! Plaintiff is not asking for much, I am not asking for the moon, I am only requesting that the NYS D.O.C.C.S. and its employees, namely the Defendants adhere to their duty, their Constitutional duty to care and provide the plaintiff, a prisoner under their custody serving a 15 year to life term of imprisonment with the medical care and treatment that his illnesses deem necessary, I want to be able to function better in my hearing, I want to be able to call and speak to my elderly mother before she leaves me forever like my father did in September 1, 2007, it has

FACTS - JOSEPH GULLO - AUDIOLOGIST - page 8

been since 2010 that I have not spoken to my mother or anyone due to not being able to hear, I have truly tried to remedy this situation, it has been many months of unrelenting pain many years of undue suffering in not being able to hear well, I have not prevailed, I will not prevail the NYS D.O.C.C.S. and its employees are just too powerful for me and lets not forget that they have big time attorneys who will most definately move to get this petition dismissed and we all know that they will never admit to wrongdoing clearly attesting "he is getting the appropriate care necessary", I believe that I have clearly shown that they are not, as the saying goes "actions speak louder than words" in their case "inactions speak louder than words" Mr. Gullos actions are clearly conscious in which he knows that his complete refusal to order additional test, a better hearing aid, and his refusal to go against his co-worker and supervisor Mr. Serhan and change plaintiffs hearing designation would greatly cause plaintiff undue harm, Mr. Gullo clearly has the authority to remedy the situation yet he absolutely refuses to do so for plaintiff could subside as normal as possible, this is clearly thought out by Mr. Gullo inflicting harm upon plaintiff Mr. Gullo nor any of the other Defendants should be allowed to get away with this inhumane treatment of plaintiff, regardless of their role they should be held accountable, not to do so will allow them to continue to abuse plaintiff and others held within the NYS D.O.C.C.S.

(It should be noted that I also filed numerous grievance complaints against Mr. Gullo-enclosed are copies of the documents that I have)

7.

CAUSES OF ACTIONFIRST CAUSE OF ACTION

Defendant John Serhan (Audiologist), classified me (Hard of Hearing H.L. 20) after a thorough examination of my hearing and of the circumstances leading to the hearing loss, which was an operation to remove a 5th. Nerve Schwannoma Brain Tumor. The brain tumor was wrapped around the 5th nerve in my brain so that nerve had to be severed to fully remove the brain tumor, thus leaving me with complete hearing loss in my left ear and deficiency in the hearing of my right ear, this same audiologist who classified me Hard of Hearing H.L. 20, then reclassifies me H.L. 30 NON SIGNIFICANT HEARING LOSS in 2010, after I complained to him that I felt like my hearing was getting worse, thus due to this reclassification the reasonable accommodations that he sanctioned in 2008 were revoked without me even being aware of such, I only found out because I applied for a

shake awake alarm clock and was denied due to being H.L. 30 and not qualifying, I was then transferred to Sullivan CF and after a series of grievance and complaints to the medical department, I was scheduled to see Mr. Serhan, he agreed to re-test my hearing after a few audiology visits and did so in July of 2011, after the hearing test Mr. Serhan told me "okay, I am going to reinstate your H.L. 20 status, just don't ask for a sign language interpreter" I then waited a couple of days and reapplied for a shake awake alarm clock and was once again denied due to not being eligible because I was classified H.L. 30!

SECOND CAUSE OF ACTION

All my attempts to remedy this grave error have proven to be futile, I have written grievances, appealed to the Superintendents, I have appealed to C.O.R.C. in Albany, all have been denied, i have sontested said reports by filig two "Challenge to Accuracy forms" with the medical department, nothing was done, I have written to Defendant Carl J. Koenigsmann, M.D. (Deputy Commissioner-Chief Medical Officer) also to no avail, nothing is done, I have appealed to both Defendants Mr. John Serhan and Mr. Gullo countless times during my audiology visits explaining the full extent of my distictive hearing loss problem which hearing and understanding what is said aloud or to me directly in noisy enviornments and of the constant loud ringing in my ears (Mr. Gullo), at those times both have replied "that they do they can that there is nothing further that they can do" but this is clearly not so as is clearly evidenced by the ABR (Auditory Brain-stem Response) hearing test ordered by Ms. Sandy Kelsey (Elmira CF-Nurse Practitioner), said test resulted in an "ABNORMAL" result. (see: enclosed copy of said results done at an outside hospital-Arnot Health Medical Center in Chemung County) Prior to this test I clearly asked both Mr. Serhan and Mr. Gullo if there were any further test that could be done to further explore the full extent of my hearing loss and both replied "NO". Due to this abnormal test result I have had to read up on it myself, due to problems in getting an explination of the impact that this negative result has on my hearing, I read one study on ABR Brainstem testing (Audiology Online-Good Practices in Auditory Brainstem Response by Wendy Crumley-<http://www.audiologyonline.com/goodpractices-in-auditory-brainstem-827>), and have discovered from said article that their are a number of test that can be done to determine the full extent of my hearing loss such as the stacked ABR

SECOND CAUSE OF ACTION - page 2

test and a test to determine if I suffer from A.M.S.D. (Auditory Neuro-pathy Septrum Disorder), surely both mr. Serhan and Mr. Gullo know about these further test that could be done, yet they denie such when clearly asked if further testing can be done, such actions are clearly in reprisal to the many complaints filed against them both, I have written to Ms. LaShanna S. Frasier (ADA Coordinator), also to no avail, I get no assistance, plaintiff then upon arriving in this facility (Marcy CF) applied for reasonable accomodations because plaintiff has an extremely difficult time in hearing and understanding what is voiced over the this prisons communication system, the facility and a few others have in place a system that uses a microphone to voice all communication over the dorms P.A. system making it unduly hard on plaintiff because he cannot hear nor understand what is being said at anytime, at one instance I had to go to the officer and ask what he said and his response was "what are you deaf!" to which I replied yes and removed my hearing aid to show to him, my request for reasonable accomodation based on this and other factors was denied further condoning and allowing plaintiff to have to reside in an enviornment in which he can not function properly, my hearing has deteriorated to the point where all I hear is a very loud ringing in my ears and can barely hear anything even in non-noisy enviornments, I have had to resort to attempt to read lips to make out what is being said to me and this is only effective about 50% of the time, leaving me lost and confused as to what is being said to me, when I told Defendant Dr. Vadlamudi at one of the doctor appointments that I could not hear him because of all the background noise in the hall-way, that could I move closer and would he please turn to face me when he speaks part of his respose to me was "you hear me just fine"

SECOND CAUSE OF ACTION - page 3

"this is clearly noted on the AHR-Ambulatory Health record progress note for the doctors appointment see: enclose copy dated: 1/9/2016, the doctor also threw me out of his office terminating the doctors appointment without taking care of my medical needs because I could not hear him and told him so again, these named prison authorities are in place to help in situation such as these yet they chose to do nothing to help plaintiff, thus compelling the plaintiff to seek Judicial intervention and assistance in the inhumane treatment and deliberate indifference to plaintiffs serious medical needs.

THIRD CAUSE OF ACTION

I have been denied medication by Defendant DR. VADLAMUDI, on a continuous basis since being removed from the previous prescribed medication (Neurotin) on December 24, 2015, for the residual ailments of a Brain tumor removal operation on May 30, 2003, medication that was prescribed to me by a Neurologist in Interfaith Hospital (Bklyn-New York, in 2006), prescribed in two NYC Correctional facilities (Manhattan House of Detention for Men-Rikers Island), in numerous state facilities (Downstate CF, Wende CF, Eastern CF, Sullivan CF, Elmira CF, Greene CF) by numerous Doctor's and medically trained personnal with due care and consideration as to my ailments and reason for the prescription of said medication. (Brain Tumor-seizures nerve damage-severe headaches-displaced nerve root in lower back), this medication was specifcally prescribed due to its positive results for the arthrithis in my neck (cervical spine - see: enclose copy of M.R.I. report), due to a large section of my brain having to be removed, sawed off to gain access to the brain tumor and not being replaced, for the severe nerve damage on the left side of my face, (dead nerves-electrical jolts/tic's), which are very painful when they occur, for the displaced left nerve root in my lower back, (Lumber spine - see: enclose copy of M.R.I. report), due to being afflicted with a brain infection and having to have numerous spinal taps performed and have a shunt surgically placed to gradually remove the accumulating brain fluid, for my seizure disorder, severe headaches, all of these syptoms/ailments were controlled by one medication (Neurotin), to which Defendant Dr. Vadlamudi, "ABRUPTLY DISCONTINUED" totally disregarding the specific warning of the manufactor (see: enclosed copies) to avoid doing, weaning a patient off of a medication in 3 days that he has been on for years with

THIRD CAUSE OF ACTION - PAGE 2

positive results is clearly complete disregard for the patients well-being, clearly unprofessional and deliberate indifference to plaintiffs serious medical ailments, which are all clearly documented, Defendant Dr. Vadlamudi's treatment are clearly vindictive due to the formal complaints filed at the facility level (grievances), and to Authorities in Albany, namely Defendant CARL J. KOENIGSMANN, M.D. (Deputy Commissioner/Chief Medical Officer).

Defendant Dr. Vadlamudi, has been a Dr. for many years, he clearly knows the risk and potential harm in not prescribing alleviating medication for plaintiffs serious medical ailments and in abruptly discontinuing a medication that is clearly labeled by the manufator of said medication to avoid, Defendant Dr. Vadlamudi's complete refusal to prescribe medication to alleviate plaintiffs serious medical ailments amounts to a clear case of deliberate indifference, he clearly knows that I am suffering severe pain, yet he refuses to do anything, allowing me to suffer and wallow in pain is clearly a violation of my Constitutional right Against Cruel and Unusual Punishment (U.S.C.A. amend. 8), I have written numerous times to Dr. Vadlamudi's immediate supervisor, Defendant CARL J. KOENIGSMANN, M.D. (Deputy Commissioner/Chief Medical Officer), to no avail, nothing is done, no corrective action is taken to cease said inhumane treatment and when they do chose to respond all I hear is a boiler plate response no matter who replies, basically stating the same substance the only difference is the signature on the reply letters. I have also written to ANDREW CUOMO (NYS Governor), also to no avail, no reply, no corrective action taken (see: copy-of letter enclosed), I receive no help, my pleas for help go unanswered disregarded further allowing the inhumane treatment that they have been put on notice of to continue, due to the inhumane treatment

THIRD CAUSE OF ACTION - PAGE 3

I wrote to Ms. Maureen Boll (Deputy Commissioner and Counsel), also to no avail (see: enclosed copie of letter), I have written to Mr. Stephen M Ash (Regional Health Services Administrator), in reply to his boiler plate reply to me, informing him of the occurances of the dates that he mentioned in his letter, I then received no further reply, nor was any corrective action taken on my plea for help in aiding me to get relief from the severe pain that I am forced to suffer and wallow in, thus causing the filing of this 1983 Civil Law suit due to the callous indifferent behavior towards plaintiff's serious medical ailments, plaintiff a pro se litigant, a **HUMAN BEING**, who is serving a 15 to life sentence, who even though is a prisoner is still protected by the Constitution of the United States of America and thereby such violations of human rights protections should not ~~be allowed to occur even to lowly prisoners/felons, let alone to~~ truly sick incarcerated felons serving a sentence of imprisonment that can essentially become a death sentence due to the inhumane medical treatment, it is the duty of the State to provide its inmates with all necessary medical care irregardless of cost, the State cannot be allowed to skirt this duty, I practuallly have to beg for help and yet nothing is done to help me or correct the inhumane treatment, surely this cannot be condoned or allowed to continue.


8. PRAYER FOR RELIEF

WHEREFORE, Plaintiff request that this Court grant the following relief:

Plaintiff request that he be administered a proper and effective medication to alleviate the severe pain and suffering of his serious medical ailments such as the arthritis in his cervical spine, nerve damage to the left side of his face which at times cause electrical type jolts/tics that are very painful when they occur, for the displaced left nerve root in his lumbar spine, seizure disorder and severe headaches and anyother legitimate medical ailment that causes pain, plaintiff also request that his hearing be evaluated by an independent Audiologist and that he be informed as to the adverse effects that the abnormal ABR test has on his over all hearing and that any and all hearing test be conducted to fully evaluate the full extent of plaintiffs hearing loss and that said Audiologist explain to plaintiff the results of said test, that plaintiff be re-instated and re-classified HL 20 and be moved to a Sensorial Facility with full sensorial disabled unit (SDU) access, plaintiff further request that the Defendants be made to pay compensatory damages not to exceed \$425.00, the total amount for the filing of this Civil action and Administrative fee and for the fees of mailing of the complaint to the Defendants via certified mail return receipt requested to verify service and delivery of the complaint due to the callous and wanton actions against plaintiff causing undue pain and suffering, plaintiff also request that Dr. V treat plaintiff for all his medical ailments needs/ailments in a humane manner, with dignity and due care as is his duty as a medical doctor and Facility Health Services Director, Plaintiff lastly request to retain the right to increase the amount of compensatory damages and add punitive damages if plaintiff suffers any additional medical problems due to the Defendants uncaring, inhumane treatment of plaintiff and his serious life threatening medical needs/ailments and anyother relief this Court deem just and proper.

Plaintiff declares under the penalty of perjury that the foregoing is true and correct to the best of his recollection and knowledge.

DATED: June 17, 2016


JOSE ACOSTA 08A0290
Plaintiff - pro se